



CITY OF DALLAS

December 22, 1995

William F. Caton  
Office of the Secretary  
Federal Communications Commission  
1919 M St., N.W.  
Room 222  
Washington, DC 20554

DOCKET FILE COPY ORIGINAL

RE: In the matter of WT Docket, 95-157 Amendment to the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation

Enclosed please find an original and ten copies of City of Dallas' Reply Comments to the Notice of Proposed Rulemaking in connection with the above referenced matter. Please file stamp one copy and return it to me in the self-addressed envelope also enclosed. Should you have any questions, I may be contacted at (214) 670-3478.

Sincerely,

Scott Carlson  
Assistant City Attorney  
City of Dallas

Enclosure

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## Summary

The City of Dallas ("City") supports the recommendations of certain of the commentators and the Commission in establishing guidelines for cost reimbursement associated with PCS spectrum reallocation. In particular, the City of Dallas supports the Comments submitted by the American Petroleum Institute.

The City supports the costs which the Commission has included as eligible for reimbursement by a PCS spectrum acquirer. The City urges that the costs attributable to consultants and attorneys be included among the expenses which will be eligible for reimbursement during the negotiations between current and future spectrum users. While experienced in the operation and maintenance of a large and complex communications network, the City has limited experience in the anticipated transactions involving spectrum reallocation. This limited experience makes the retention of such advisors necessary to fully and adequately represent its interests.

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C.**

In the Matter of	)	
Amendment to the Commission's	)	WT Docket 95-157
Rules Regarding a Plan for Sharing	)	RM - 8643
The Costs of Microwave Relocation	)	

**REPLY COMMENTS OF THE CITY OF DALLAS**

The City of Dallas ("Dallas") hereby files these reply comments in the above captioned proceeding. In particular, the reply comments relate to those comments filed by the American Petroleum Institute ("API") in the above captioned proceeding.

**BACKGROUND**

Dallas is a city with a population of 1,006,877 and encompasses 333 square miles within its jurisdictional boundaries. The public safety communication system of Dallas is the eighth largest in the nation and remains at the forefront of technological innovation. The Dallas system of wireless communications, including a 2 GHz microwave system to link remote transmitter/receiver sites, plays a critical role in the delivery of services from

Police, Fire, and Emergency Medical personnel for the purposes of protecting and enhancing the safety of life and property within the North Texas area. Given the large geographical area covered by the City of Dallas, wireless communications are absolutely essential to provide a timely and effective response to our citizens needs.

## DISCUSSION

### A. General

As with other microwave incumbents, the City of Dallas supports the adoption of a cost-sharing plan. Dallas supports the Commission proposal allowing the creation of "reimbursement rights" once a relocation agreement is reached between the microwave incumbent and the initial PCS licensee.

### B. API Comments

In particular, the City of Dallas supports a number of the comments submitted by the American Petroleum Institute ("API"). Discussion of these points follows.

#### 1. Cap Designation

- a. Dallas concurs with the API and as originally proposed by PacBell that a cap of \$600,000 is appropriate. Dallas contends that the expected costs of relocation will likely exceed the Commission's determination set forth in the NPRM on page 21. Dallas believes that the Commission's estimates are overly optimistic. A cap of \$600,000 simply allows higher expenses but

does not obligate the reimbursement of the higher amount unless the higher amount is reflected in actual costs.

b. Related to the reimbursement cap is the nature of equipment replacement. The replacement system is to be equal to or superior to that system which is replaced. API makes a very valid point when it states that replacement of analog equipment will not be truly comparable because of diminishing continued support for such equipment by manufacturers. Dallas supports this contention. When analog equipment is being replaced, digital equipment should be considered as comparable and it should be the sole decision of the incumbent microwave licensee to accept analog replacement equipment. With digital replacement, the estimates established by the Commission are low.

2. Dallas, in agreement with API, urges that a restrictive definition of costs for purposes of reimbursement by subsequent PCS licensees be avoided. Maximum flexibility will be encouraged during voluntary negotiations without such a definition.

3. Dallas also believes that serviceability should be included as a fourth factor in the determination of "comparable facilities", as stated by API. (See also the foregoing discussion under 1 above for discussion of analog/digital capabilities as it relates to comparable facilities. )

4. Independent cost estimates should only be required during the involuntary phase of the negotiations and at the PCS relocater's expense. If the parties wish to estimate costs, then they may do so. This position coincides with the API position.

C. Exclusion of Attorney's And Consultants Fees


1. Dallas is especially concerned with the Commission's proposal to exclude those fees for attorney's and consultants incurred by incumbents, without the PCS relocater's approval, from consideration as part of the comparable facilities. These are not premium payments. Instead, the services associated with such fees are necessary to produce an agreement which "works" for the microwave incumbent. Incumbents, such as Dallas, do not have the expertise or resources that are available to the PCS licensees. Often, consultants and attorneys reside on the staffs of the licensees. The use of attorneys and consultants by microwave incumbents assures fair and equitable treatment at the hands of the PCS licensees.

2. Such expenses must be allowed to be recouped without the prior approval of the PCS relocater. The PCS relocater will often not see the retention of such experts as in its interests and in giving the relocater in a sense a veto, the Commission denies the microwave incumbent the services which are needed to strike a fair and equitable deal. Similarly, these fees should not be considered a premium payment.

Such fees are part of many transactions in ordinary commercial commerce. This is no premium or extraordinary expense.

Accordingly, Dallas encourages the Commission to treat such expenses as part of the required relocation process at all phases of the negotiations.

Respectfully submitted,  
City of Dallas

By:   
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